

# ASSEMBLY, No. 3919

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Assemblyman CLINTON CALABRESE**

**District 36 (Bergen and Passaic)**

**Assemblyman WILLIAM W. SPEARMAN**

**District 5 (Camden and Gloucester)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblymen Wirths, Space, Assemblywoman Swain, Assemblyman  
Tully, Assemblywomen Pinkin, Dunn and Reynolds-Jackson**

**SYNOPSIS**

Extends certain permits during COVID-19 emergency.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/11/2020)**

1 AN ACT extending certain permits and amending P.L.2008, c.78.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State  
4 of New Jersey:

5

6 1. Section 2 of P.L.2008, c.78 (C.40:55D-136.2) is amended to  
7 read as follows:

8 2. The Legislature finds and declares that:

9 a. The most recent national recession has caused one of the  
10 longest economic downturns since the Great Depression of the  
11 1930s and has drastically affected various segments of the New  
12 Jersey economy, but none as severely as the State's banking, real  
13 estate and construction sectors.

14 b. The real estate finance sector of the economy is in severe  
15 decline due to the sub-prime mortgage problem and the resultant  
16 widening mortgage finance crisis. The extreme tightening of  
17 lending standards for home buyers and other real estate borrowers  
18 has reduced access to the capital markets.

19 c. As a result of the crisis in the real estate finance sector of the  
20 economy, real estate developers and redevelopers, including  
21 homebuilders, and commercial, office, and industrial developers,  
22 have experienced an industry-wide decline, including reduced  
23 demand, cancelled orders, declining sales and rentals, price  
24 reductions, increased inventory, fewer buyers who qualify to  
25 purchase homes, layoffs, and scaled back growth plans.

26 d. The process of obtaining planning board and zoning board of  
27 adjustment approvals for subdivisions, site plans, and variances can  
28 be difficult, time consuming and expensive, both for private  
29 applicants and government bodies.

30 e. The process of obtaining the myriad other government  
31 approvals, required pursuant to legislative enactments and their  
32 implementing rules and regulations, such as wetlands permits,  
33 treatment works approvals, on-site wastewater disposal permits,  
34 stream encroachment permits, flood hazard area permits, highway  
35 access permits, and numerous waivers and variances, also can be  
36 difficult and expensive; further, changes in the law can render these  
37 approvals, if expired or lapsed, impossible to renew or re-obtain.

38 f. County and municipal governments obtain determinations of  
39 master plan consistency, conformance, or endorsement with State or  
40 regional plans, from State and regional government entities which  
41 may expire or lapse without implementation due to the state of the  
42 economy.

43 g. The most recent national recession has severely weakened  
44 the building industry, and many landowners and developers are  
45 seeing their life's work destroyed by the lack of credit and dearth of

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 buyers and tenants, due to the crisis in real estate financing and the  
2 building industry, uncertainty over the state of the economy, and  
3 increasing levels of unemployment in the construction industry.

4 h. The construction industry and related trades are sustaining  
5 severe economic losses, and the lapsing of government development  
6 approvals would, if not addressed, exacerbate those losses.

7 i. Financial institutions that lent money to property owners,  
8 builders, and developers are experiencing erosion of collateral and  
9 depreciation of their assets as permits and approvals expire, and the  
10 extension of these permits and approvals is necessary to maintain  
11 the value of the collateral and the solvency of financial institutions  
12 throughout the State.

13 j. Due to the current inability of builders and their purchasers  
14 to obtain financing, under existing economic conditions, more and  
15 more once-approved permits are expiring or lapsing and, as these  
16 approvals lapse, lenders must re-appraise and thereafter  
17 substantially lower real estate valuations established in conjunction  
18 with approved projects, thereby requiring the reclassification of  
19 numerous loans which, in turn, affects the stability of the banking  
20 system and reduces the funds available for future lending, thus  
21 creating more severe restrictions on credit and leading to a vicious  
22 cycle of default.

23 k. As a result of the continued downturn of the economy, and  
24 the continued expiration of approvals which were granted by State  
25 and local governments, it is possible that thousands of government  
26 actions will be undone by the passage of time.

27 l. Obtaining an extension of an approval pursuant to existing  
28 statutory or regulatory provisions can be both costly in terms of  
29 time and financial resources, and insufficient to cope with the  
30 extent of the present financial situation; moreover, the costs  
31 imposed fall on the public as well as the private sector.

32 m. It is the purpose of this act to prevent the wholesale  
33 abandonment of approved projects and activities due to the present  
34 unfavorable economic conditions, by tolling the term of these  
35 approvals for a period of time, thereby preventing a waste of public  
36 and private resources.

37 n. Due to the need to implement strict social distancing  
38 measures and take other precautions in order to limit the spread of  
39 COVID-19 and minimize its public health impacts, much business  
40 and government activity has been halted, disrupted, or delayed.  
41 This has in turn resulted in a severe downturn in the economy. It is  
42 therefore appropriate to toll the term of approvals during a new  
43 COVID-19 extension period in order to prevent the abandonment of  
44 approved projects and activities, and the waste of public and private  
45 resources that comes with it, as well as to be ready to quickly  
46 resume projects when it is safe to restart normal business and  
47 government activity.

48 (cf: P.L.2014, c.84, s.1)

1       2. Section 3 of P.L.2008, c.78 (C.40:55D-136.3) is amended to  
2 read as follows:

3       3. As used in P.L.2008, c.78 (C.40:55D-136.1 et seq.):

4       "Approval" means, except as otherwise provided in section 4 of  
5 P.L.2008, c.78 (C.40:55D-136.4), any approval of a soil erosion and  
6 sediment control plan granted by a local soil conservation district  
7 under the authority conferred by R.S.4:24-22 et seq., waterfront  
8 development permit issued pursuant to R.S.12:5-1 et seq., permit  
9 issued pursuant to "The Wetlands Act of 1970," P.L.1970, c.272  
10 (C.13:9A-1 et seq.), permit issued pursuant to the "Freshwater  
11 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et al.),  
12 approval of an application for development granted by the Delaware  
13 and Raritan Canal Commission pursuant to the "Delaware and  
14 Raritan Canal State Park Law of 1974," P.L.1974, c.118 (C.13:13A-  
15 1 et seq.), permit issued by the New Jersey Meadowlands  
16 Commission pursuant to the "Hackensack Meadowlands  
17 Reclamation and Development Act," P.L.1968, c.404 (C.13:17-1 et  
18 al.), approval of an application for development granted by the  
19 Pinelands Commission and determination of municipal and county  
20 plan conformance pursuant to the "Pinelands Protection Act,"  
21 P.L.1979, c.111 (C.13:18A-1 et seq.), permit issued and center  
22 designations pursuant to the "Coastal Area Facility Review Act,"  
23 P.L.1973, c.185 (C.13:19-1 et seq.), septic approval granted  
24 pursuant to Title 26 of the Revised Statutes, permit granted  
25 pursuant to R.S.27:7-1 et seq. or any supplement thereto, right-of-  
26 way permit issued by the Department of Transportation pursuant to  
27 paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301  
28 (C.27:1A-5), approval granted by a sewerage authority pursuant to  
29 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et  
30 seq.), approval granted by a municipal authority pursuant to the  
31 "municipal and county utilities authorities law," P.L.1957, c.183  
32 (C.40:14B-1 et seq.), an agreement with a municipality, county,  
33 municipal authority, sewerage authority, or other governmental  
34 authority for the use or reservation of sewerage capacity, approval  
35 issued by a county planning board pursuant to chapter 27 of Title 40  
36 of the Revised Statutes, preliminary and final approval granted in  
37 connection with an application for development pursuant to the  
38 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.),  
39 permit granted pursuant to the "State Uniform Construction Code  
40 Act," P.L.1975, c.217 (C.52:27D-119 et seq.), plan endorsement  
41 and center designations pursuant to the "State Planning Act,"  
42 P.L.1985, c.398 (C.52:18A-196 et al.), permit or certification issued  
43 pursuant to the "Water Supply Management Act," P.L.1981, c.262  
44 (C.58:1A-1 et al.), permit granted authorizing the drilling of a well  
45 pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification or  
46 permit granted, exemption from a sewerage connection ban granted,  
47 wastewater management plan approved, and pollution discharge  
48 elimination system permit pursuant to the "Water Pollution Control

1 Act," P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted  
2 pursuant to "The Realty Improvement Sewerage and Facilities Act  
3 (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), certification or  
4 approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.),  
5 certification issued and water quality management plan approved  
6 pursuant to the "Water Quality Planning Act," P.L.1977, c.75  
7 (C.58:11A-1 et seq.), approval granted pursuant to the "Safe  
8 Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.), permit  
9 issued pursuant to the "Flood Hazard Area Control Act," P.L.1962,  
10 c.19 (C.58:16A-50 et seq.), any municipal, county, regional, or  
11 State approval or permit granted under the general authority  
12 conferred by State law or rule or regulation, or any other  
13 government authorization of any development application or any  
14 permit related thereto whether that authorization is in the form of a  
15 permit, approval, license, certification, permission, determination,  
16 interpretation, exemption, variance, exception, waiver, letter of  
17 interpretation, no further action letter, agreement or any other  
18 executive or administrative decision which allows a development or  
19 governmental project to proceed.

20 "COVID-19" means the coronavirus disease 2019, as announced  
21 by the World Health Organization on February 11, 2020, and first  
22 identified in Wuhan, China.

23 "COVID-19 extension period" means the period beginning  
24 March 9, 2020 and continuing for as long as a public health  
25 emergency, pursuant to the "Emergency Health Powers Act,"  
26 P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency,  
27 pursuant to P.L.1942, c. 251 (C.App.A.9-33 et seq.), or both, that  
28 has been declared by the Governor in response to COVID-19, is in  
29 effect.

30 "Development" means the division of a parcel of land into two or  
31 more parcels, the construction, reconstruction, conversion,  
32 structural alteration, relocation or enlargement of any building or  
33 other structure or facility, or of any grading, soil removal or  
34 relocation, excavation or landfill or any use or change in the use of  
35 any building or other structure or land or extension of the use of  
36 land.

37 "Environmentally sensitive area" means an area designated  
38 pursuant to the State Development and Redevelopment Plan  
39 adopted, as of the effective date of P.L.2008, c.78 (C.40:55D-136.1  
40 et seq.), pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as  
41 Planning Area 4B (Rural/Environmentally Sensitive), Planning  
42 Area 5 (Environmentally Sensitive), or a critical environmental site,  
43 but shall not include any extension area as defined in this section.

44 "Extension area" means an area designated pursuant to P.L.1985,  
45 c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan),  
46 Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning  
47 Area), Planning Area 4A (Rural Planning Area), a designated  
48 center, or a designated growth center in an endorsed plan until June

1 30, 2013, or until the State Planning Commission revises and  
2 readopts New Jersey's State Strategic Plan and adopts regulations to  
3 refine this definition as it pertains to Statewide planning areas,  
4 whichever is later; a smart growth area and planning area  
5 designated in a master plan adopted by the New Jersey  
6 Meadowlands Commission pursuant to subsection (i) of section 6 of  
7 P.L.1968, c.404 (C.13:17-6); regional growth areas, villages, and  
8 towns, designated in the comprehensive management plan prepared  
9 and adopted by the Pinelands Commission pursuant to section 7 of  
10 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); the  
11 planning area of the Highlands Region as defined in section 3 of the  
12 "Highlands Water Protection and Planning Act," P.L.2004, c.120  
13 (C.13:20-3), and any Highlands center designated by the Highlands  
14 Water Protection and Planning Council, established pursuant to  
15 section 4 of P.L.2004, c.120 (C.13:20-4); an urban enterprise zone  
16 designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or  
17 P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in  
18 need of redevelopment pursuant to sections 5 and 6 of P.L.1992,  
19 c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the  
20 Department of Community Affairs; or similar areas designated by  
21 the Department of Environmental Protection. "Extension area"  
22 shall not include an area designated pursuant to the State  
23 Development and Redevelopment Plan adopted, as of the effective  
24 date of P.L.2008, c.78, pursuant to P.L.1985, c.398 as Planning  
25 Area 4B (Rural/Environmentally Sensitive) or Planning Area 5  
26 (Environmentally Sensitive), except for any area within Planning  
27 Area 4B or Planning Area 5 that is a designated center, or a  
28 designated growth center in an endorsed plan.

29 "Extension period" means the period beginning January 1, 2007  
30 and continuing through December 31, 2015; provided, however,  
31 that the period in Superstorm Sandy-impacted counties shall  
32 continue through December 31, 2016.

33 "Government" means any municipal, county, regional, or State  
34 government, or any agency, department, commission or other  
35 instrumentality thereof.

36 "Superstorm Sandy-impacted counties" means Atlantic, Bergen,  
37 Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and  
38 Union counties, as identified by the United States Department of  
39 Housing and Urban Development.

40 "Superstorm Sandy-impacted extension period" means the period  
41 beginning January 1, 2016 and continuing through December 31,  
42 2016.

43 (cf: P.L.2016, c.14, s.1)

44

45 3. Section 4 of P.L.2008, c.78 (C.40:55D-136.4) is amended to  
46 read as follows:

47 4. a. (1) For any government approval in existence during the  
48 extension period, the running of the period of approval is

1 automatically suspended for the extension period, except as  
2 otherwise provided hereunder; however, the tolling provided for  
3 herein shall not extend the government approval more than six  
4 months beyond the conclusion of the extension period.

5 (2) For any government approval in existence on December 31,  
6 2015 concerning lands located entirely within one or more of the  
7 Superstorm Sandy-impacted counties, as defined in section 3 of  
8 P.L.2008, c.78 (C.40:55D-136.3), the running of the period of  
9 approval is automatically suspended for the Superstorm Sandy-  
10 impacted extension period, except as otherwise provided hereunder;  
11 however, the tolling provided for herein shall not extend the  
12 government approval more than six months beyond the conclusion  
13 of the Superstorm Sandy-impacted extension period.

14 (3) Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall  
15 shorten the duration that any approval would have had in the  
16 absence of P.L.2008, c.78 (C.40:55D-136.1 et seq.), nor shall  
17 P.L.2008, c.78 (C.40:55D-136.1 et seq.) prohibit the granting of  
18 such additional extensions as are provided by law when the tolling  
19 granted by P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall expire.  
20 Notwithstanding any previously enacted provision of P.L.2008, c.78  
21 (C.40:55D-136.1 et seq.), as amended and supplemented, the  
22 running of the period of approval of all government approvals  
23 which would have been extended pursuant to the definition of  
24 "extension area," added by P.L.2012, c.48, shall be calculated,  
25 using that definition, retroactive to the enactment of P.L.2008, c.78  
26 (C.40:55D-136.1 et seq.).

27 (4) For any government approval in existence on March 9, 2020,  
28 the running of the period of approval is automatically suspended for  
29 the COVID-19 extension period, except as otherwise provided  
30 hereunder; however, the tolling provided for herein shall not extend  
31 the government approval more than six months beyond the  
32 conclusion of the COVID-19 extension period.

33 b. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be  
34 deemed to extend or purport to extend:

35 (1) any permit or approval issued by the government of the  
36 United States or any agency or instrumentality thereof, or any  
37 permit or approval by whatever authority issued of which the  
38 duration of effect or the date or terms of its expiration are specified  
39 or determined by or pursuant to law or regulation of the federal  
40 government or any of its agencies or instrumentalities;

41 (2) any permit or approval issued pursuant to the "Pinelands  
42 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) if the  
43 extension would result in a violation of federal law, or any State  
44 rule or regulation requiring approval by the Secretary of the Interior  
45 pursuant to Pub.L.95-625 (16 U.S.C. s.471i);

46 (3) any permit or approval issued within an environmentally  
47 sensitive area;

1 (4) any permit or approval within an environmentally sensitive  
2 area issued pursuant to the "Highlands Water Protection and  
3 Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or any permit or  
4 approval issued within the preservation area of the Highlands  
5 Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3);

6 (5) any permit or approval issued by the Department of  
7 Transportation pursuant to Title 27 of the Revised Statutes or under  
8 the general authority conferred by State law, other than a right-of-  
9 way permit issued pursuant to paragraph (3) of subsection (h) of  
10 section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted  
11 pursuant to R.S.27:7-1 et seq. or any supplement thereto;

12 (6) any permit or approval issued pursuant to the "Flood Hazard  
13 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), except (a)  
14 where work has commenced, in any phase or section of the  
15 development, on any site improvement as defined in paragraph (1)  
16 of subsection a. of section 41 of the "Municipal Land Use Law,"  
17 P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures or  
18 (b) where the permit or approval authorizes work on real property  
19 owned by the government or the federal government;

20 (7) any coastal center designated pursuant to the "Coastal Area  
21 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of  
22 March 15, 2007 (a) had not submitted an application for plan  
23 endorsement to the State Planning Commission, and (b) was not in  
24 compliance with the provisions of the Coastal Zone Management  
25 Rules at N.J.A.C.7:7E-5B.6; or

26 (8) any permit or approval within the Highlands planning area  
27 located in a municipality subject to the "Highlands Water Protection  
28 and Planning Act," P.L.2004, c.120, that has adopted, as of May 1,  
29 2012, in accordance with the Highlands Water Protection and  
30 Planning Council conformance approval, a Highlands master plan  
31 element, a Highlands land use ordinance, or an environmental  
32 resource inventory, except that the provisions of this paragraph  
33 shall not apply to any permit or approval within a Highlands center  
34 designated by the Highlands Water Protection and Planning  
35 Council, notwithstanding the adoption by the municipality of a  
36 Highlands master plan element, a Highlands land use ordinance, or  
37 an environmental resource inventory.

38 c. P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall not affect any  
39 administrative consent order issued by the Department of  
40 Environmental Protection in effect or issued during the extension  
41 period or COVID-19 extension period, nor shall it be construed to  
42 extend any approval in connection with a resource recovery facility  
43 as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

44 d. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall  
45 affect the ability of the Commissioner of Environmental Protection  
46 to revoke or modify a specific permit or approval, or extension  
47 thereof pursuant to P.L.2008, c.78 (C.40:55D-136.1 et seq.), when  
48 that specific permit or approval contains language authorizing the



1 modification or revocation of the permit or approval by the  
2 department.

3 e. In the event that any approval tolled pursuant to P.L.2008,  
4 c.78 (C.40:55D-136.1 et seq.) is based upon the connection to a  
5 sanitary sewer system, the approval's extension shall be contingent  
6 upon the availability of sufficient capacity, on the part of the  
7 treatment facility, to accommodate the development whose approval  
8 has been extended. If sufficient capacity is not available, those  
9 permit holders whose approvals have been extended shall have  
10 priority with regard to the further allocation of gallonage over those  
11 approval holders who have not received approval of a hookup prior  
12 to the date of enactment of P.L.2008, c.78 (C.40:55D-136.1 et seq.).  
13 Priority regarding the distribution of further gallonage to any permit  
14 holder who has received the extension of an approval pursuant to  
15 P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be allocated in order  
16 of the granting of the original approval of the connection.

17 f. P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall not toll any  
18 approval issued under the "Municipal Land Use Law," P.L.1975,  
19 c.291 (C.40:55D-1 et seq.) in connection with an application for  
20 development involving a residential use where, subsequent to the  
21 expiration of the permit but prior to January 1, 2007, an amendment  
22 has been adopted to the master plan and the zoning ordinance to  
23 rezone the property to industrial or commercial use when the permit  
24 was issued for residential use.

25 g. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be  
26 construed or implemented in such a way as to modify any  
27 requirement of law that is necessary to retain federal delegation to,  
28 or assumption by, the State of the authority to implement a federal  
29 law or program.

30 h. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be  
31 deemed to extend the obligation of any wastewater management  
32 planning agency to submit a wastewater management plan or plan  
33 update, or the obligation of a municipality to submit a wastewater  
34 management plan or plan update, pursuant to the "Water Quality  
35 Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.) and the Water  
36 Quality Management Planning rules, N.J.A.C.7:15-1.1 et seq.,  
37 adopted by the Department of Environmental Protection, effective  
38 July 7, 2008.

39 i. All underlying municipal, county, and State permits or  
40 approvals within the extension area as defined in section 3 of  
41 P.L.2008, c.78 (C.40:55D-136.3), as amended, are extended in the  
42 Pinelands Area as designated pursuant to the "Pinelands Protection  
43 Act," P.L.1979, c.111 (C.13:18A-1 et seq.).  
44 (cf: P.L.2016, c.14, s.2)

45  
46 4. Section 5 of P.L.2008, c.78 (C.40:55D-136.5) is amended to  
47 read as follows:

